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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. FERNANDO LOPEZ-CUEVAS, Defendant - Appellant.	No. 06-10746 D.C. No. CR-02-00418-GEB MEMORANDUM [*]

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted May 12, 2008[**]

Before: KOZINSKI, Chief Judge, THOMAS and CALLAHAN, Circuit Judges.

This is an appeal of the district court's order issued on November 21, 2006, reaffirming the sentence, following affirmation in appeal No. 04-10285 of

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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appellant's conviction, but remand of the matter by this court for further proceedings in light of *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005). On remand, the district court reaffirmed the sentence previously imposed, finding that the sentence imposed was not materially different from the sentence that would have been given had the Court known that the guidelines were advisory.

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The district court carefully considered the factors under 18 U.S.C. § 3553(a). Further "reasonableness" review by this court is not warranted. *See United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006).

To the extent that appellant argues that he should have been allowed to allocute when the case was remanded for an *Ameline* inquiry, that argument is foreclosed by this court's opinion in *United States v. Silva*, 472 F.3d 683 (9th Cir. 2007). To the extent that appellant argues the district court should have held an evidentiary hearing on remand we note that the district court followed the procedure suggested by *Ameline*. *See United States v. Ameline*, 409 F.3d at 1085. Both parties submitted written materials to the district court prior to the district court issuing its written order reaffirming the sentence previously imposed.

Accordingly, the district court did not abuse its discretion in denying appellant an evidentiary hearing. See *United States v. Chacon-Palomares*, 208 F.3d 1157 (9th Cir. 2000).

Appellee's renewed motion for summary affirmance is granted.

AFFIRMED.